

Application No. 09/912,401

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**REMARKS**

Claims 1-13 were presented for examination and claims 1-13 are rejected. In the present amendment, claims 1 and 8 have been amended, and claims 14-33 have been added. No new matter has been introduced. Support for the new and amended claims can be found in paragraphs 35-37, Figures 2, 3A-3B and 7, and throughout the remainder of the specification. Upon entry of the present amendment, claims 1-33 will be currently pending in this application, of which claims 1, 8, 14, and 24 are independent. Applicants submit that claims 1-33 are in condition for allowance.

Please note that a revocation of power of attorney and change of correspondence address are concurrently filed herewith. As such, Applicants respectfully request the Examiner to mail any further correspondence to the address associated with the customer number of Applicants' attorneys at Choate, Hall & Stewart, LLP.

The following comments address all stated grounds of rejection. Applicants respectfully traverse all rejections and urge the Examiner to pass the claims to allowance in view of the remarks set forth below.

**Claim Objections**

The Examiner objected to claims 1 and 8 because of informalities regarding placement of a comma. Claims 1 and 8 are hereby amended to include a comma in a location suggested by the Examiner. Accordingly, Applicants respectfully request the Examiner to withdraw this objection.

**CLAIM REJECTIONS UNDER 35 U.S.C. §102****I. Claims 1-6 Rejected Under 35 U.S.C. §102**

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Claims 1-6 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,055,564 to Phaal ("Phaal"). Amended claim 1 is an independent claim. Claims 2-6 depend on and incorporate all the patentable subject matter of independent claim 1, as amended. Applicants respectfully traverse this rejection and submit that Phaal fails to disclose each and every element of claims 1-6 of the claimed invention, as amended.

**A. Independent Claim 1 Patentably Distinguished over Phaal**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Amended independent claim 1 is directed towards a method for maximizing throughput while avoiding overload of one or more servers. This independent claim recites intercepting, via an interface unit, a client request for information from the server and determining, by the interface unit, the current server performance. Server performance is based on one or more of: the number of active connections opened to the server, the response time of the server, and the rate at which said response time is changing. The method also includes forwarding, by the interface unit, the client request to the server if said current server performance is below or within a range determined for optimal performance, whereby avoiding overload of the server. Where server performance is outside such optimal range, the method further includes buffering, by the interface unit, the client request until said current server performance is within the optimal range for server performance.

Phaal does not disclose buffering, by the interface unit, the client request until the current server performance is within the optimal range for server performance. Instead of buffering the client request, Phaal notifies the client to re-submit the client request at a deferred time. Upon determining a message to a server should be deferred, the deferral manager of Phaal provides the

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client with a web page for re-submitting the client request at a scheduled time (see column 7, lines 16-44, Phaal). The admission control gateway of Phaal, which the Examiner equates with the interface unit of the claimed invention, does not buffer the client request. Instead the admission control gateway of Phaal forwards the client request to the deferral manager, which in turn notifies the client to re-submit the client request at a deferred time. Thus, Phaal fails to disclose, teach, or suggest buffering, by the interface unit, the client request until said current server performance is within the optimal range for server performance.

For at least the above-discussed reasons, Phaal fails to disclose each and every feature of independent claim 1. Claims 2-6 depend on and incorporate all the patentable subject matter of independent claim 1. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 1-6 under 35 U.S.C. §102.

### CLAIM REJECTIONS UNDER 35 U.S.C. §103

#### II. Claims 7-13 Rejected Under 35 U.S.C. §103

Claims 7-12 are rejected under 35 U.S.C. §103 as unpatentable over Phaal in view of U.S. Patent No. 6,259,705 to Takahashi et al. ("Takahashi"). The Examiner failed to cite the basis for rejection of claim 13 in the Office Action. Applicants will address claim 13 in connection with the rejection of claims 7-12. Claim 8 is an amended independent claim. Claims 9-13 depend on and incorporate all the patentable subject matter of claim 8, as amended. Claim 7 depends on and incorporates all the patentable subject matter of amended independent claim 1. Applicants respectfully traverse this rejection and submit that Phaal in view of Takahashi fails to teach or suggest each and every feature of claims 7-13 of the claimed invention, as amended.

**A. Claim 7 Dependent from Patentable Independent Claim 1**

For the reasons discussed above in connection with the rejection of independent claim 1, Applicants submit amended independent claim 1 is patentable and in condition for allowance. As such, a claim dependent from claim 1 is patentable and in condition for allowance. Thus, Applicants submit dependent claim 7 is patentable and in condition for allowance.

**B. Independent Claim 8 Patentably Distinguished over Phaal in view of Takahashi**

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. Amended independent claim 8 is directed towards a system for maximizing throughput while avoiding overload of a server. The system comprises an interface unit for intercepting a client request for information from the server. The interface unit determines the current server performance based on the number of connections opened to the server, the response time of the server, and the rate at which said response time is changing. The interface unit also forwards the client request to the server if said current server performance is below or within a range determined for optimal performance, whereby avoiding overload of the server. Where server performance is beyond such optimal range, the interface unit buffers the client request until said current server performance is within the optimal range for server performance.

Phaal in view of Takahashi does not teach or suggest an interface unit buffering the client request until said current server performance is within the optimal range for server performance. Instead of buffering the client request by the admission control gateway of Phaal, the admission control gateway forwards the client request to a deferral manager to notify the client to re-submit

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the client request at a deferred time. In the Office Action, the Examiner cites Takahashi only to suggest one ordinarily skilled in the art might modify Phaal to determine the current server performance by a server error/overload message. However, as with Phaal, Takahashi does not teach or suggest an interface unit buffering the client request until said current server performance is within the optimal range for server performance. Rather, Takahashi is directed towards a load-balancing system for transferring data from a first control unit to a second control unit. Therefore, Phaal in view of Takahashi fails to teach or suggest the interface unit buffers the client request until said current server performance is within the optimal range for server performance.

Because Phaal in view of Takahashi fails to teach or suggest each and every feature of the claimed invention, Applicants submit independent claim 8 is patentable and in condition for allowance. Claims 9-13 depend on and incorporate all the patentable limitations of claim 8. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 7-13 under 35 U.S.C. §103.

#### PATENTABILITY OF NEW CLAIMS

##### C. New Independent Claims 14 and 24 Patentable over Phaal and Takahashi

New independent claims 14 and 24 are directed towards a method and system claim respectively for controlling a rate of establishing network connections to a server. These independent claims recite intercepting, by an interface unit, a request from a client to establish a transport layer connection with a server, and determining, by the interface unit, a number of transport layer connections established with the server. The interface unit provides a pool of at least a first transport layer connection to the server. These claims further recite opening, by the

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interface unit, a second transport layer connection to the server if the number of transport layer connections established with the server is below a maximum number of connections for the server. Applicants submit that neither Phaal nor Takahashi, alone or in combination, disclose, teach, or suggest each and every feature of the claimed invention.

Neither Phaal nor Takahashi, alone or in combination, disclose, teach, or suggest an interface unit opening a second transport layer connection to the server if the number of transport layer connections established with the server is below a maximum number of connections for the server. Instead, Phaal determines if messages should be communicated to a server as part of an ongoing session between the client and the server. In further contrast, Takahashi is directed towards a load-balancing system for transferring data from a first control unit to a second control unit. As such, Phaal in view of Takahashi fails to disclose, teach or suggest an interface unit opening a second transport layer connection to the server if the number of transport layer connections established with the server is below a maximum number of connections for the server.

Because Phaal in view of Takahashi, alone or in combination, fails to teach or suggest each and every element of the claimed invention, Applicants submit independent claims 14 and 24 are patentable and in condition for allowance. Claims 15-23 depend on and incorporate all the patentable limitations of claim 14, and claims 25-33 depend on and incorporate all the patentable limitations of claim 24. Therefore, Applicants also submit that claims 15-23 and 25-33 are patentable and in condition for allowance.

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**CONCLUSION**

In light of the aforementioned amendments and arguments, Applicants contend that each of the Examiners rejections has been adequately addressed and all of the pending claims are in condition for allowance. Accordingly, Applicants respectfully request reconsideration, withdrawal of all grounds of rejection, and allowance of all of the pending claims.

Should the Examiner feel that a telephone conference with Applicants' attorney would expedite prosecution of this application, the Examiner is urged to contact the Applicants' attorney at the telephone number identified below.

Respectfully submitted,

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